

SEP 23 1976

MICHAEL ROBAK, JR., CLERK

No. **76-432**

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975

RENA B. WHITE
BEATRICE RICE
MYN CLEARY
GWENDOLYN LANDENBERGER
FRANCES W. KENNEDY

Petitioners,

v.

ARTHUR MURRAY, INC.

PETITION FOR WRIT OF CERTIORARI
TO THE
SUPREME COURT OF THE STATE OF UTAH

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Rena B. White, Beatrice Rice, Myn
Cleary, Gwendolyn Landenberger and Frances
W. Kennedy, petition for a Writ of Certio-
rari to review the decision of the Supreme
Court of the State of Utah entered in this
case May 5, 1976, (Rehearing denied June
28, 1976) affirming the judgment of the
District Court of Utah, Third Judicial

(1)

(2)

District, that it did not have personal jurisdiction over Arthur Murray, Inc. under Utah Statutes (Utah Code 38-27-22 to 78-27-24).

OPINIONS BELOW

The opinion of the Supreme Court of the State of Utah (App. A, infra pp.10-15) is reported in 549 P. 2d 439 (May 5, 1976).

The District Court's Order, Judgment and Decree quashing the service of summons on Arthur Murray, Inc. and dismissing petitioners' complaints (App. B, infra pp. 16-18) is unreported.

JURISDICTION

The decision of the Supreme Court of Utah was entered May 5, 1976. On May 20, 1976, petitioners were granted extension of time for filing a Petition for Rehearing to June 24, 1976, pursuant to Rule 76(f) Utah Rules of Civil Procedure. On June 24, 1976, a Petition for Rehearing was duly filed pursuant to Rule 76(e) Utah Rules of Civil Procedure.

We invoke the jurisdiction of the Supreme Court under 28 USC 1257(3) and 28 USC 2101(c).

(3)

CONSTITUTIONAL PRIVILEGE INVOLVED

The Due Process clause of Section 1, Amendment XIV to the Constitution of the United States.

QUESTION PRESENTED

Whether the Supreme Court of Utah denied petitioners due process of law when it affirmed the decision of the lower court quashing service of summons on Arthur Murray, Inc. and dismissing petitioners' complaints in the face of Utah Statutes providing jurisdiction of Utah's courts "over non-resident defendants to the fullest extent permitted by the due process clause of the Fourteenth Amendment to the United States Constitution" (Utah Code 78-27-22 to 78-27-24) (App. C, infra, pp. 19-20).

STATEMENT

The constitutional question of the right of petitioners under the due process clause of Amendment Fourteen to assert jurisdiction over Arthur Murray, Inc. in Utah's courts was presented at every stage of the proceeding.

The complaints of petitioners (identical in pertinent parts) allege fraudulent, pretensive and coercive conduct of Arthur

(4)

Murray, Inc. in the sale of courses of dancing instruction to the petitioners and prays for damages for same. The complaints allege that Arthur Murray, Inc. supervised, controlled and directed, and participated in this conduct, and by such conduct subjected itself to jurisdiction of the District Court of Utah under Utah's so-called "long arm statutes" (78-27-22 to 78-27-24).

Utah Statutes (78-27-22 to 78-27-24 Utah Code) in pertinent part provides for jurisdiction of Utah courts over non-residents, if non-residents transact any business in the state or contracts to supply services or goods in the state (78-27-24). The Legislative mandate is that the statutes "should be applied so as to assert jurisdiction over non-resident defendants to the fullest extent permitted by the due process clause of the Fourteenth Amendment to the United States Constitution.

After due service of process on Arthur Murray, Inc., and on December 9, 1974, Arthur Murray, Inc. moved to quash service of summons on the grounds that it was a Delaware corporation with its principal place of business at Coral Gables, Florida, and had never done business in Utah and was

(5)

not doing business in Utah at the time and that it did not have an office, agent or employee within Utah, and that the court lacks jurisdiction over Arthur Murray, Inc.

On June 27, 1975, hearing was had on the Motion. At the hearing (and on the Hearing for Motion for New Trial on September 11, 1975) the following uncontradicted contacts between Arthur Murray, Inc. and its Salt Lake City franchise dance studio were shown by deposition and affidavits:

1. Arthur Murray, Inc. specifically directed its Salt Lake City dance studio in its fraudulent and coercive sales of dancing lessons to petitioners, including such minute directions as telling them:

- "a. What to say.
- b. How to say it.
- c. When to say it.
- d. How to overcome or reply to negative statements.
- e. When to say nothing.
- f. When to change the subject."

2. Arthur Murray, Inc.'s representative regularly visited its Salt Lake City studio to sign and approve certificates of awards to petitioners. There were many such awards and all petitioners received

(6)

some. A representative of Arthur Murray, Inc. regularly visited its Salt Lake City studio to supervise and control the sales of courses of dancing instruction.

3. Arthur Murray, Inc. directed its Salt Lake City studio in the sale of loss leader sales to entrap customers. It supplied the instructions and the advertisements and they were followed by the Salt Lake studio.

4. Arthur Murray, Inc. exercised overriding control of all activities of the Salt Lake studio. Arthur Murray, Inc.'s franchise agreement with its Salt Lake studio provided for tight control.

Arthur Murray, Inc. did not profer one iota of evidence contradicting these contacts (indeed, control) of its Salt Lake dance studio; nor any evidence whatsoever at the hearings.

Pursuant to subdivision 2 or Rule 21, Rules of the Supreme Court of the United States, we are requesting the District Court of Utah (the court possessed of the record) to transmit all evidence adduced at the District Court hearings relating to contracts between Arthur Murray, Inc. and its Salt Lake City franchised dance studio,

(7)

namely:

Deposition of Paul Curry

Affidavit of Marie LaTour

Arthur Murray Executive Manuel

Arthur Murray Franchise Agreements

Affidavit of Petitioners

The denial of due process to petitioners by the Supreme Court of Utah's affirmance of the lower court's judgment, quashing service of summons and dismissing the complaints, was raised by petitioners in their "Brief of Appellants" (filed December 2, 1975), Appellants Reply Brief "C" (filed March 19, 1976), and Petition for Rehearing (filed June 24, 1976) in the Supreme Court of Utah.

REASONS FOR GRANTING THE WRIT

The refusal of the Supreme Court of Utah to apply the due process clause of the Fourteenth Amendment, denies the benefits of said amendment to every person in the State of Utah.

The hostility of the Supreme Court of Utah to the Fourteenth Amendment is demonstrated in State v. Phillips 540 P. 2d 936 (Utah 1975) wherein the court challenges the validity of the adoption of the amendment.

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We believe that issue presented by this petition is the most unique in decades.

Edwin Brown Firmage, Esq., professor of Law, University of Utah, in his Law Review article "The Utah Supreme Court and the Rule of Law: Phillips and the Bill of Rights in Utah", points out that the Utah Supreme Court in Phillips is denying to the people of Utah the benefits of the due process clause of the Fourteenth Amendment.

"...the Utah Supreme Court defied or demonstrated ignorance of over half a century of United States Supreme Court case law, holding to the contrary."¹

The Utah Supreme Court's denial of the due process clause of the Fourteenth Amendment in the instant cases is even more aggravated than in Phillips.

For here, the Supreme Court of Utah;

1. Turns its back on this court's decision in International Shoe Co. v. Washington, 326 U.S. 310 (1945) pronouncing the minimum contacts doctrine of due process.

¹ Utah Law Review, Vol. 1975, Fall, Number 3, p. 593.

(9)

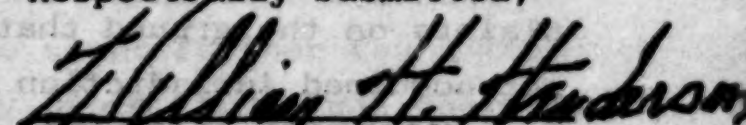
2. Turns its back on the mandate of Utah's Legislature that Utah's Courts apply the minimum contacts doctrine "to the fullest extent permitted by the due process clause of the Fourteenth Amendment to the United States Constitution" (Utah Code 78-27-27).


3. Turns its back on the uncontradicted evidence in this case showing contacts between Arthur Murray, Inc. and its Salt Lake City franchise, far beyond the requirements of the minimum contacts doctrine.

4. Turns your petitioners out of court in their actions alleging the sordid fraudulent practices of franchisers of dance studios that have become a national scandal.²

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,


WILLIAM H. HENDERSON
Attorney for Petitioners


Joseph C. Fratto
Of Counsel

² "After the Ball", Wall Street Journal Pacific Coast Ed., March 10, 1972 (pertinent parts quoted in App. D, infra, pp 21-22).

(10)

APPENDIX A

THE SUPREME COURT OF THE STATE OF UTAH

Nos. 14286
14287
14288
14289
14290

RENA B. WHITE, et al

Plaintiffs and Appellants

v.

ARTHUR MURRAY, INC.

Defendant and Respondent

[May 5, 1976]

TUCKETT, Justice:

The plaintiffs appeal from an order of the district court dismissing their complaints on the ground that the court had not acquired jurisdiction over the defendant. While the plaintiffs filed separate complaints, each alleging cause of action for fraud against the defendant, the ruling complained of by the district court is common to each case and is dealt with here as though it were one appeal. Plaintiffs

(11)

are residents of Salt Lake County and filed their separate complaints in the District Court of Salt Lake County and caused service of summons to be made upon the defendant in the state of Florida. Defendant is a corporation organized and existing under the laws of the state of Delaware with its principal office and place of business in Coral Gables, Florida.

After the service of summonses and copies of the complaints upon the defendant in the state of Florida, the defendant appeared specially to move the court to dismiss the complaints on the ground and for the reason that the court had not acquired jurisdiction over the defendant.

After a hearing on the motion, the court below found that the defendant has never qualified to do business in the state of Utah, nor has it ever done business in this state. The court further found that an Arthur Murray Dance Studio was operated in Salt Lake City, Utah, but that the studio was operated by a franchisee of the defendant, and except for isolated visits by auditors of the defendant, Arthur Murray, Inc., has not maintained an office in, done business in, had an agent, employee or

(12)

officer or other representative in the state of Utah, neither before, during or since the times referred to in plaintiffs' complaints. The court granted the defendant's motion to quash the service of summons served on behalf of each of the plaintiffs. During the times mentioned in the plaintiffs' complaints an Arthur Murray Dance Studio was operated in Salt Lake City and was in fact operated by a franchisee or franchisees who were not made parties to these proceedings. The contract entered into by the franchisee and the defendant contains the following pertinent language:

(a) The franchisee will include provision in each enrollment agreement or contract entered into with a student relating to the taking of dancing lessons or the payment therefore substantially as follows: This agreement is made by student with the franchised owner of the studio in which he or she is enrolling and said franchisee is solely responsible for the performance of this contract and the dancing lessons provided for herein. As student, I understand and agree that this contract is made by me solely with the above

(13)

studio, as seller and does not directly or indirectly constitute an agreement with or an obligation of Arthur Murray, Inc., or any of its employees.

* * * *

(c) Franchisee agrees to use at all times the words "a franchised studio" whenever "Arthur Murray Studio", "Arthur Murray Dance Studio", "Arthur Murray School of Dancing", or any variation thereof is used in the franchisee's advertising or printed matter. The franchisee agrees to use in his appointment cards, receipts, etc., wherever the name "Arthur Murray" appears, the phrase "Arthur Murray Dance Studio," _____ "franchisee," (the blank to be filled in with the franchisee's name).

(d) The franchisee will immediately have the phrase "Arthur Murray Dance Studio" _____ "owner and franchisee" (the blank to be filled in with the franchisee's name) painted on the outer door of entrance to the franchisee's studio or studios.

The defendant did furnish to the franchisee instructional material, various forms

(14)

of advertising and promotional materials, including dance competitions. For its services the defendant charged the franchisee a percentage of the income received from students who paid for dancing instruction. Auditors from the defendant's office checked the books of the franchisee on an annual or biannual basis to determine whether the defendant was receiving the agreed percentage. The defendant carried on no other activity in the state of Utah, not did it supervise or engage in the management of the dance studio.

In order for the Utah court to acquire jurisdiction over the defendant it could only be accomplished on the basis of Section 78-27-24, U.C.A. 1953, which provides in part as follows:

Any person . . . whether or not a citizen or a resident of this state, who in person or through an agent does any of the following enumerated acts, submits himself, and if an individual, his personal representative, to the jurisdiction of the courts of this state as to any claim arising from:

(1) The transaction of any business within this state;

(15)

(2) Contacting to supply services or goods in this state;

(3) The causing of any injury within this state whether tortious or by breach of warranty;

The activity of the defendant in this State does not meet the requirements of the above section which has been construed and dealt with in a number of decisions by this court.¹

We are of the opinion that the deviation of the district court in determining that it had not acquired jurisdiction over the defendant is amply supported by the record, and the decision is affirmed. Defendant is entitled to costs.

WE CONCUR:

F. Henri Henriod,
Chief Justice

J. Allan Crockett, A. H. Ellett, Justice
Justice Justice

MAUGHAN, Justice, concurs in the result.

1. Durham-Bush, Inc. v. Bill Hartmann Plumbing & Heating, Inc., 30 Utah 2d 177, 515 P. 2d 92; Foreign Study League v. Holland-America Line, 27 Utah 2d 442, 497 P. 244; Hill v. Zale Corporation, 25 Utah 2d 357, 482 P. 2d 332; Union Ski Company v. Union Plastics Corp., No. 14065, ___ P. 2d ____.

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APPENDIX B

THE DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

Nos. 222923

222924

222925

222926

222927

RENA B. WHITE, et al
Plaintiffs

v.

ARTHUR MURRAY, INC.
Defendant

ORDER

The motion of Arthur Murray, Inc., to quash service of summons, having come on regularly for hearing on the 27th day of June, 1975, at the hour of 2:00 p.m. before the Honorable Stewart M. Hanson, Sr., with William Henderson appearing on behalf of the plaintiffs, and Philip R. Fishler appearing on behalf of the defendant, and the above entitled matters having been consolidated for purposes of this hearing, the Court after hearing arguments of counsel and being fully advised finds as follows:

(17)

1. Arthur Murray, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and has its principle place of business in Coral Gables, Florida. Arthur Murray, Inc. has never qualified to do business nor has it ever done business in the State of Utah.

2. That during the time periods referred to in plaintiffs' complaint, an Arthur Murray dance studio was operated in Salt Lake City, Utah, but that at all times referred to in plaintiffs' complaint, said dance studio was operated by a franchisee of Arthur Murray, Inc. and that but for isolated visits into the State of Utah by the auditors of Arthur Murray, Inc., Arthur Murray, Inc. has not maintained an office in, done business in, had an agent, employee or officer or other representative in the State of Utah either before, during or since the time periods referred to in plaintiffs' complaint.

NOW THEREFORE, upon motion of the defendant, Arthur Murray, Inc.:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED

The motion of Arthur Murray, Inc., to quash the service of the summons of each

(18)

plaintiff be and is hereby granted, and further that each of the plaintiff's complaints is hereby dismissed.

Dated this 11th day of July, 1975.

BY THE COURT

Stewart M. Hanson, Sr.
Judge

(19)

APPENDIX C

Relevant Provisions

UTAH CODE

78-27-22 to 78-27-24

78-27-22. Jurisdiction over non-residents--Purpose of act.--It is declared, as a matter of legislative determination, that the public interest demands the state provide its citizens with an effective means of redress against nonresident persons, who through certain significant minimal contacts with this state, incur obligations to citizens entitled to the state's protection. This legislative action is deemed necessary because of technological progress which has substantially increased the flow of commerce between the several states resulting in increased interaction between persons of this state and persons of other states.

The provisions of this act, to ensure maximum protection to citizens of this state, should be applied so as to assert jurisdiction over nonresident defendants to the fullest extent permitted by the due process clause of the Fourteenth Amendment

(20)

to the United States Constitution.

78-27-23. Jurisdiction over nonresidents

--Definitions.--As used in the act:

(1) The words "any person" mean any individual, firm, company, association, or corporation.

(2) The words "transaction of business within this state" mean activities of a non-resident person, his agents, or representatives in the state which affect persons or businesses within the state of Utah.

78-27-24. Jurisdiction over nonresidents

--Acts submitting person to jurisdiction.--

Any person, notwithstanding section 16-10-102, whether or not a citizen or resident of this state, who in person or through an agent does any of the following enumerated acts, submits himself, and if an individual, his personal representative, to the jurisdiction of the courts of this state as to any claim arising from:

(1) The transaction of any business within this state;

(2) Contracting to supply services or goods in this state;

(3) The causing of any injury within this state whether tortious or by breach of warranty;

(21)

APPENDIX D

The Wall Street Journal
Pacific Coast Edition
(Excerpt)

AFTER THE BALL

Many Irate Consumers Assail Selling
Tactics of Dance Instructors

Critics Claim Some Studios Exploit
Ulterior Motives Of Pupils For Big Profits

'Gigolos & Rich Old Ladies'

...In and out of court, a growing number of angry consumers are claiming that they have been bilked by dance studios. And these complaints have created considerable concern in the offices of various regulatory authorities, including the Federal Trade Commission.

(22)

The so-called dance-studio game is by no means a new problem for the FTC. More than a decade ago, stories about dance school swindles--in which light-footed, money-hungry entrepreneurs prey upon the lonely and the aged--were splashed across the front pages of the nation's newspapers, and the FTC moved in on some of them. As the headlines faded, however, the swindlers waltzed on.

"They never did even slow up", says an FTC attorney. "They've just gone around and around and around."

The two largest studio chains, Arthur Murray, Inc. and the Fred Astaire organization, vehemently deny any intentional wrongdoing--although they concede the possibility of exploitation is omnipresent. "The nature of the business leads itself to exploitation, and we try to limit it," says Chester F. Casanave, head of the Astaire organization. "Ninety percent of the schools in the country are well run and well operated, and the organization highly resents those people who don't take care of the store."

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 22, 1976, he deposited in the mail in a United States Post Office, first class postage prepaid, addressed to Strong & Hanni, Counsel of Record for Arthur Murray, Inc., at their post office address, three copies of the foregoing Petition For Writ of Certiorari.


WILLIAM H. HENDERSON
Attorney for Petitioners